

CENTER ON RACE, POVERTY & THE ENVIRONMENT

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June 6, 2006

Bobbie Garcia
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025 MS-16
Sacramento, CA 95812

Re: Proposed Regulations Implementing AB 1497

Dear Ms. Garcia:

The Center on Race, Poverty & the Environment (CRPE) submits these comments regarding the proposed regulations implementing AB 1497. CRPE is a non-profit environmental justice organization which has represented clients living in communities hosting solid waste facilities, such as Kettleman City. CRPE urges the California Integrated Waste Management Board (CIWMB) to implement the environmental justice principles contained AB 1497 to the fullest extent possible. The proposed regulations do not do this in three main ways: (1) the proposed regulations fail to require a public hearing; (2) the proposed regulations fail to require translation and actual notice to nearby residents; and (3) the proposed regulations fail to remove the cap on civil penalties.

(1) The Regulations Fail to Require a Public Hearing.

AB 1497 requires the enforcement agency to hold a public hearing. Pub. Res. § Code 44004(h). Under the Government Code § 11346.8, public hearing has a specific definition which

requires not only an opportunity for the public to comment, but also requires agencies to respond to public comments. Instead of a public hearing, the regulations provide for an informational meeting which does not require a response to comments. Environmental justice is more than simply an opportunity to comment. Public comment must also have the chance to substantively change the project. If there is no requirement to respond to public comments, it is less likely public comment will have an impact on the solid waste facility under review.

2. The Regulations Fail to Require Translation and Actual Notice.

AB 1497 authorizes the CIWMB to provide actual personal notice to residents living within a distance other than 300 feet from the facility. Pub. Res. Code § 44004(h). The bill also authorizes the enforcement agency to translate notices. Pub. Res. Code § 44004(h)(1)©. However, the CIWMB regulations fail to require actual notice or translation. 27 CCR § 21660.1(b); 27 CCR 21660.2(c)(3). The proposed regulations omit any mention of actual notice relying on fence-line notices as well as postings to website. However, many residents living in small rural areas hosting solid waste facilities do not have access to the internet. Furthermore, the regulations leave it entirely to the discretion of the enforcement agency to translate notices as an additional measure to encourage public attendance at the informational meeting. Translation should not be considered an additional measure to increase public attendance. Rather, it should be considered a primary source of outreach, especially in communities which are predominantly non-English speaking.

3. The Regulations Fail to Remove the Cap on Civil Penalties.

AB 1497 removes the \$15,000 cap on administrative civil penalties for violations as well as the restriction prohibiting fines for the first three violations. Pub. Res. Code § 45011(a). Under AB 1497, civil penalties can be required for the first violation with no upper limit. This is a significant improvement to the current enforcement system since it is likely to deter violations by making it less cost effective to violate permit conditions. Enforcement tools that deter non-compliance are important facets of environmental justice. However, the current proposed rules are silent on this aspect of AB 1497. As part of the rulemaking documents, the CIWMB makes clear that the currently proposed regulations are part of a three phase implementation effort for AB 1497. It is important that this enforcement aspect of the bill is implemented quickly.

Conclusion

For the reasons stated above the proposed regulations would be greatly strengthened by requiring public hearings, translations, actual notice to nearby residents, and implementing the enforcement provisions of AB 1497. Please provide me with notice of CIWMB final rule implementing AB 1497. Thank you for the opportunity to comment.

Sincerely,
/s/
Caroline Farrell
Attorney at Law.

